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DOCUMENT CONTROL

September 10, 1996

Arizona Corporation Commission

**DOCKETED**

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VIA AIRBORNE EXPRESSDocket Control  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

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Re: Consolidated Docket Nos. U-3021-96-448, U-3245-96-448, U-2428-96-417,  
U-2752-96-417, U-2752-96-362, U-3016-96-402

Dear Docket Control:

Enclosed for filing, please find the original and 11 copies of an Application for Initiation of a Separate Proceeding or, in the Alternative, for Intervention. Please return one file-stamped copy in the enclosed envelope.

Thank you for your assistance in this matter. Please call me at (913) 624-6865 if you have any questions.

Very truly yours.

Donald Low

DAL/rsm

Encl.

cc: Service List

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS  
CHAIRMAN  
MARCIA WEEKS  
COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

IN THE MATTER OF THE PETITION OF AMERICAN  
COMMUNICATIONS SERVICES, INC. AND AMERICAN  
COMMUNICATIONS SERVICES OF PIMA COUNTY,  
INC. FOR ARBITRATION WITH U S WEST COMMUNI-  
CATIONS, INC. OF INTERCONNECTION RATES,  
TERMS, AND CONDITIONS PURSUANT TO 47 U.S.C.  
§252(b) OF THE TELECOMMUNICATIONS ACT OF 1996. )  
)  
) DOCKET NO. U-3021-96-448  
)  
) DOCKET NO. U-3245-96-448  
)  
)

IN THE MATTER OF THE PETITION OF AT&T  
COMMUNICATIONS OF THE MOUNTAIN STATES, INC.  
FOR ARBITRATION WITH U S WEST COMMUNICATIONS,  
INC. OF INTERCONNECTION RATES, TERMS, AND  
CONDITIONS PURSUANT TO 47 U.S.C. §252(b) OF THE  
TELECOMMUNICATIONS ACT OF 1996. )  
)  
) DOCKET NO. U-2428-96-417  
)  
)  
)

IN THE MATTER OF THE PETITION OF MFS COMMUNI-  
CATIONS COMPANY, INC. FOR ARBITRATION WITH U S  
WEST COMMUNICATIONS, INC. OF ARBITRATION RATES,  
TERMS, AND CONDITIONS PURSUANT TO 47 U.S.C. §252(b)  
OF THE TELECOMMUNICATIONS ACT OF 1996. )  
)  
) DOCKET NO. U-2752-96-362  
)  
)  
)

IN THE MATTER OF THE PETITION OF TCG PHOENIX FOR  
ARBITRATION WITH U S WEST COMMUNICATIONS, INC.  
OF INTERCONNECTION RATES, TERMS, AND CONDITIONS  
PURSUANT TO 47 U.S.C. §252(b) OF THE TELECOMMUNI-  
CATIONS ACT OF 1996. )  
)  
) DOCKET NO. U-3016-96-402  
)  
)  
)

**APPLICATION FOR INITIATION OF A SEPARATE PROCEEDING  
OR, IN THE ALTERNATIVE, FOR INTERVENTION**

Sprint Communications Company L.P. ("Sprint"), hereby requests the Commission to convert the consolidated proceeding established in the above matters by the Arbitrator's order of August 30, 1996, into a separate generic proceeding to examine U S WEST's costs and determine the rates that U S WEST can charge under the Telecommunications Act of 1996 ("Act") and the FCC's interconnection rules<sup>1</sup> for interconnection, unbundled network elements, transport and termination of

<sup>1</sup> CC Docket No. 96-98, First Report and Order, August 8, 1996.

traffic, and wholesale services available for resale; or, in the alternative, applies for leave to intervene in the consolidated arbitrations. In support of this Application, Sprint states:

## **I. INTRODUCTION**

As of this date, several carriers, including MFS Communications Company, AT&T Communications of the Mountain States, Inc., TCG Phoenix, American Communications Services, Inc., and MCImetro have filed with the Commission petitions for arbitration of interconnection terms and conditions with U S WEST pursuant to Section 252 of the Act. Among the unresolved issues on which such carriers seek arbitration are the rates that U S WEST can charge for interconnection, unbundled network elements, transport and termination of traffic, and resold telecommunications services.

Section 252(c) of the Act requires a state commission, in resolving an open issue by arbitration and imposing conditions upon the parties, to:

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
- (3) provide a schedule for implementation of the terms and conditions of the parties to the agreement.

Under subsection (d) of section 252, charges for interconnection, network elements, and transport and termination of traffic must be set at cost-based rates.<sup>2</sup> Wholesale prices for the resale of telecommunications services must be determined on the basis of retail rates less avoided costs.<sup>3</sup>

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<sup>2</sup> Under Section 252(d)(1), charges for interconnection and network elements shall be based on the cost of providing the interconnection or network element and be nondiscriminatory, and may include a reasonable profit. Section 252(d)(2) prescribes that charges for transport and termination of traffic must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and be based on a reasonable approximation of the additional costs of terminating such calls. Bill-and-keep arrangements are not precluded, pursuant to section 252(d)(2)(B).

<sup>3</sup> Section 252(d)(3).

In CC Docket No. 96-98, the FCC promulgated rules for the application of these pricing standards. Under 47 C.F.R. §§ 51.503 and 51.505, the incumbent LEC's rates for interconnection and unbundled elements must be based on the total element long-run incremental cost ("TELRIC") of the element, plus a reasonable allocation of forward-looking common costs. Significantly, the rules require that: "An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in [other sections of the rules]." 47 C.F.R. §51.505(e). State commissions must use this same methodology, including review of incumbent LECs' cost studies, in setting rates for transport and termination of traffic. The rules establish default proxies or, in the case of transport and termination of traffic, allow bill-and-keep arrangements, to be used as interim rates until the state commission can review the incumbents' cost studies and establish permanent rates pursuant to the methodology prescribed in the rules.

Regarding resale, 47 C.F.R. §51.609 lists specific categories of costs that are considered "avoided" in setting wholesale rates, and the amount of avoided retail costs shall be determined based on a cost study submitted by the incumbent LEC. Under 47 C.F.R. §51.611, state commissions can establish interim wholesale rates reflecting discounts of 17% - 25% of the incumbent LECs' retail rates if information is not available to develop rates using the methodology prescribed in 47 C.F.R. §51.609.

The Arbitrator has prudently determined in his Order of August 30, 1996, in these matters that the cost issues which are presented in proceedings under §251 & 252 of the Act are best addressed in a consolidated proceeding rather than separate arbitration cases.<sup>4</sup> Review and analysis of TELRIC cost studies in the short time necessitated by the Act's deadlines for the individual arbitration cases is clearly problematic, especially since U S WEST cost studies have not been previously available

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<sup>4</sup> Since the Order was issued before MCI filed its Petition for Arbitration, the order did not apply to that case. Presumably, however, the MCI arbitration also involves common U S WEST cost issues and will also be consolidated.

to interested parties. The consideration of the cost issues in a subsequent and consolidated proceeding will allow parties time to obtain the necessary documentation and conduct a meaningful review and analysis of the cost studies free from the time deadlines of the individual arbitration proceedings.<sup>5</sup> Such a proceeding will also permit a more informed and comprehensive consideration of the cost issues by the Arbitrator and Commission since the perspectives of the parties can be presented in a single forum.

However, Sprint is concerned that some perspectives, including those of Sprint, will not be adequately represented in that consolidated arbitration proceeding, unless procedural steps are taken by the Arbitrator or the Commission to allow full participation by those interested parties.

## **II. THE CONSOLIDATED ARBITRATION SHOULD BE CONVERTED INTO A GENERIC PROCEEDING TO SET RATES**

Although Sprint applauds the Arbitrator's decision to resolve common cost and rate issues involving U S WEST in a single proceeding rather than in individual arbitrations, the consolidated proceeding appears to be too restrictive and may not allow sufficient participation by all interested parties. Under the August 30th Order, only the parties to four of the pending arbitration cases are to participate in the consolidated proceeding. Although the Arbitrator may envision that subsequent Petitions for arbitration with U S WEST will also be consolidated, the timing of the filing of such petitions may be such as to preclude meaningful participation in the consolidated proceeding. Furthermore, it is possible that Petitions for arbitration could be filed in the future after the consolidated proceeding.<sup>6</sup>

Clearly, the consolidated arbitration proceeding will establish the rates for all aspects of interconnection arrangements with U S WEST. Although subsequent Petitioners for arbitration will

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<sup>5</sup> Although the August 30th Order uses the term "consolidated arbitration," it appears that the proceeding is not intended to be subject to the deadlines applicable to arbitration proceedings under the Act. Conversion of the proceeding to a "generic" proceeding would remove any doubt.

<sup>6</sup> As the Commission knows, new entrants may not file a petition for arbitration until 135 days after requesting negotiations for interconnection with an incumbent LEC. There is no time deadline for making such requests and Sprint does not know when potential new entrants may have made, or will make, such requests.

presumably be free to argue for different rates in future arbitration proceedings, it is unlikely that the Commission will undertake a de novo review each time a CLEC requests arbitration on these issues, particularly because U S WEST would presumably submit the same cost information in each case. Consequently, the Commission's decisions in this proceeding will essentially establish the rates available to all other CLECs in subsequent negotiations or arbitrations with U S WEST.

It is therefore highly desirable that permanent decisions on the rate issues involved in interconnection agreements be made in a manner which allows full participation by all interested parties. The participation of Sprint and other interested parties in such a process of establishing U S WEST's rates for various elements and services will help ensure the development of a comprehensive record, while affording Sprint the opportunity to present its positions. In other words, such a process would serve the public interest by allowing all interested parties the opportunity to have input as the Commission decides the terms and conditions under which local competition will develop in Arizona.

Sprint therefore requests that the Commission convert the consolidated arbitration proceeding into a separate generic proceeding to set the rates that U S WEST can charge for interconnection, unbundled network elements, transport and termination of traffic, and resale. The Commission should provide notice of the generic proceeding and revise the procedural schedule so that all interested parties, and not just parties to pending arbitrations cases, would have adequate opportunity to intervene and participate, including an opportunity to fully review U S WEST's cost studies and provide *meaningful* input in *setting* the rates.

**III. SPRINT SHOULD BE ALLOWED IMMEDIATELY TO INTERVENE IN THE CONSOLIDATED PROCEEDING SO THAT IT MAY OBTAIN ACCESS TO U S WEST'S COST STUDIES.**

If the Commission determines that it does not wish to convert the consolidated arbitrations into a generic docket, Sprint requests that it immediately be granted intervention in the consolidated proceeding dealing with cost and rate issues.

Sprint is a telecommunications carrier currently providing interexchange services in Arizona. Sprint has filed an application to provide local exchange telecommunications services throughout Arizona and is preparing to offer local exchange services to customers in Arizona in the near future. In connection with that provision of local service, Sprint requested commencement of negotiations with U S WEST on April 15, 1996. Those negotiations are currently still in process and include discussions on rates for interconnection, unbundled network elements, transport and termination of traffic, and wholesale rates for resale, the very issues that the Arbitrator has consolidated for hearing, commencing November 18, 1996. If, as anticipated, Sprint is unable to successfully negotiate an agreement with U S WEST, it will need to file a petition for arbitration on unresolved issues. Although the cost issues which Sprint is unable to resolve with U S WEST will presumably be consolidated with the other cases for the November 18th hearing, Sprint is concerned that it will not have adequate time to obtain and analyze U S WEST's cost studies before petitioner testimony is due to be filed under the existing schedule. Even if Sprint files its Petition for Arbitration in the near future, it may be several weeks before a procedural order can be entered and U S WEST ordered to provide Sprint with its TELRIC studies. Although the testimony of petitioners is not due until October 25, 1996, Sprint will need as much time as possible to review and analyze the cost studies because it has limited resources to conduct such review and analysis, and such resources are being used throughout the country in the multitude of proceedings engendered by the Act. Therefore, in order to avoid possible prejudice to Sprint's ability to meaningfully participate in the consolidated proceedings, Sprint requests that it be allowed to intervene immediately.<sup>7</sup>

WHEREFORE, Sprint requests that the Commission initiate a generic docket to set the rates that U S WEST can charge for interconnection, unbundled network elements, transport and

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<sup>7</sup> Assuming that Sprint files a Petition for Arbitration and the cost and rate aspects of that case are also consolidated, Sprint may need to move at that time for a modification of the procedural schedule for the consolidated proceeding, if neither of its requests herein are granted. This obviously will depend on when the Petition for Arbitration is filed

termination of traffic, and resale; or alternatively, grant Sprint immediate intervention in the consolidated arbitration proceeding.

Respectfully submitted,

Sprint Communications Company L.P.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was served by mailing a copy thereof to the parties on the attached service list on this 10th day of September, 1996.

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